



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-14023

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393569.

The Houston Police Department (the "department") received a request for a specified offense report, all incident/offense reports involving two named individuals for fires, thefts, burglaries, vandalism, threats and/or criminal mischief for a specified time period, all incident reports involving the same individuals at a specified address for the same time period, any pawn shop transactions involving the same two individuals for the same time period, and all calls for service involving an alarm at the specified address for a different time period. You indicate you will redact driver's license numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the request is for offense reports pertaining to the two named individuals during a specified time period, including a specified offense report and reports relating to specified offenses. Thus, this request, in part, requires the department to compile the named individuals' criminal histories. We note, however, that you have submitted the specified offense report and two offense reports involving one of the specified offenses, theft. Because these reports were specifically requested by the requestor, they do not implicate the privacy interests of the named individuals and they may not be withheld as a criminal history compilation under section 552.101 in conjunction with common-law privacy. Additionally, the remaining submitted reports do not list either individual as a suspect, arrestee, or criminal defendant. This information is not part of a criminal history compilation and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, we will address your arguments under section 552.108 for this information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code §552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 137020607, 189899409, and 048756110 are related to investigations that are inactive pending additional leads. Further, you state the statutes of limitations for these offenses have not expired and the investigations may be reactivated once additional leads are developed. Based on these representations, we conclude that release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, section 552.108(a)(1) is applicable to report numbers 137020607, 189899409, and 048756110.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code §552.108(a)(2). You state that report numbers 076177207, 110274507, 000737508, 175693107, 018986308, 046253308, and 104963408 are concluded investigations that relate to the detection, investigation, or prosecution of crimes that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude section 552.108(a)(2) of the Government Code is applicable to report numbers 076177207, 110274507, 000737508, 175693107, 018986308, 046253308, and 104963408.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report numbers 137020607, 189899409, and 048756110 under section 552.108(a)(1) of the Government Code and report numbers 076177207, 110274507, 000737508, 175693107, 018986308, 046253308, and 104963408 under section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 393569

Enc. Submitted documents

c: Requestor
(w/o enclosures)